IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6098 of 1990

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURAT CITY SCHOOL MANG ASSO THROUGH SUMANRI TRIVEDI

Versus

STATE OF GUJARAT

Appearance:

MR Mitul Shelat for Petitioners

MR J.M.Thakore ,Advocate General with

Mr. A.D.OZA, Govt.Pleader for Respondents

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 25/08/2000

ORAL JUDGEMENT

This petition has been preferred by an Association of management of secondary and higher secondary schools financially aided by the Government, of the city of Surat.

The Association assails the resolution of the State of Gujarat dated 16.5.1990 issued by the Director of Higher Education,Gujarat Government and the circular,dated 30.5.1990 issued on that basis to all secondary and higher secondary schools in Surat district , by the District Education Officer, Surat.

Under the impugned resolution of the Government and the circular, private aided institutions have been directed to fill in teaching and non-teaching posts by maintaining reservation in the following proportion:

	SC	ST	OBC	Physically handicapped
Class III	4%	40%	10%	4%
Class IV	7%	40%	10%	4%

Learned counsel Mr Mitul Shelat , appearing for the petitioner-Association assails the validity of the impugned resolution and circular of the Government, firstly on the ground that it is in clear breach of section 34 of the Gujarat Secondary Education Act, 1972 which regulates mode of recruitment on the subject of reservation of teaching and non-teaching posts in schools. He submits that under sub-section (1) of section 34 of the Act of 1972,only 50% of vacancies on teaching staff can be directed to be filled by persons belonging to SC and ST.He also argues that classification of staff of aided school is between teaching and non-teaching staff and there is no classification e.g. class III and class IV as indicated in the Government resolution and circular.

The second ground urged on behalf of the petitioner is that as total reservation of seats for different categories exceeds 50%,the same cannot be allowed to continue after the decision of the Constitution Bench of the Supreme court in the case of Indra Sawhney vs. Union of India, AIR 1993 SC 477 and followed in Ajit Singh vs. State of Punjab, AIR 1999 SC 3471.

Learned Advocate General for the State initially made an effort to support the impugned resolution and the circular of the Government by placing different interpretation on section 34 of the Act of 1972.He also argued that sub-section (1) of section 34 provides 50% reservation which is minimum and not the maximum.Therefore, keeping in view the population of SC and ST in a given area, reservation may exceed 50% and has to be upheld, unless it is found to be unreasonable

or arbitrary.

After hearing the learned counsel for the parties, I do not consider it necessary go into detail into the contentions based on section 34.

In my considered opinion, the petition deserves to succeed on the short ground that under the impugned resolution and the circular of the Government, direction to reserve seats for different categories in excess of 50% cannot be held to be consistent with the Constitution Bench decision of the Supreme Court in case of Indra Sawhney (supra).The Supreme court has held that reservation in all categories should not exceed 50% so as to balance the competing claims of forward and backward classes of the society. This petition is pending before this court since 1990. Decision of the Supreme court in the case of Indra Sawhney (supra) and the subsequent decision were rendered during the pendency of this petition. It is high time now for the State Government to reconsider the policy of reservation for aided educational institutions in the State.

For the foregoing reasons, the impugned resolution and the circular issued thereon cannot be sustained. Consequently,the petition is allowed. The impugned resolution of the State Government dated 16.5.1990 and the circular issued thereon dated 30.5.1990 (Annexures `B' and `C'to the petition) are hereby quashed.State Government is, however, granted liberty to re-examine its reservation policy in the light of the decision of the Supreme court in the case of Indra Sawhney (supra) and subsequent decision, and issue fresh resolution in accordance with the constitutional provisions contained in Articles 14 and 16 of the Constitution of India as also in the light of the provisions contained in Gujarat Secondary Education Act, 1972. This petition is pending since 1990 in which the State Government came up with a cryptic reply in July, 2000. This is a fit case where costs should be saddled and the petitioner-Association be reimbursed for bringing a public cause. A sum of Rs. 1,000/- be paid by the respondents to the petitioner-Association. Rule is accordingly made absolute.

(D. M. Dharmadhikari, C.J.)
parekh